Dodge Printing, LLC *and* Local 259-M, Graphic Communications Conference, International Brotherhood of Teamsters. Case 3–CA–27068

August 26, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. On a charge and an amended charge filed by the Union on March 10 and April 24, 2009, respectively, the General Counsel issued the complaint on April 29, 2009, against Dodge Printing, LLC (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. Thereafter, on May 12, 2009, the General Counsel issued the compliance specification and order consolidating complaint and compliance specification and notice of hearing. The Respondent failed to file an answer to the complaint or the consolidated complaint and compliance specification.

On June 26, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 29, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment[1]

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was filed by June 2, 2009, all the allegations in the consolidated complaint and compliance specification could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated June 5, 2009, notified the Respondent that unless an answer was received by June 12, 2009, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business located in Utica, New York, has been engaged in the business of commercial printing.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 in States other than the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Local 259-M, Graphic Communications Conference, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Alan Goldberg	Owner
John Wissing	CEO

The following employees of the Respondent (the unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

> All employees performing bargaining unit work of the type described in Section 2 of the collective-bargaining agreement between the Union and the Respondent, effective by its terms from April 1, 2006 through March 31, 2008, and extended from April 1, 2008 through March 31, 2009.

At all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent one of which is described above.

About January 29, 2009, the Respondent closed its Utica, New York facility.

The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of this conduct.

Since about January 29, 2009, the Respondent unilaterally failed to make severance payments to unit employees pursuant to section 19 of the collective-bargaining agreement, and unilaterally failed to pay unit employees their vacation accruals pursuant to section 12 of the collective-bargaining agreement. The Respondent engaged in this conduct without the Union's consent.

The subjects set forth in the preceding paragraph relate to wages, hours and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since January 29, 2009, to make severance payments to unit employees pursuant to section 19 of the collective-bargaining agreement and pay unit employees their vacation accruals pursuant to section 12 of the collective-bargaining agreement, we shall order the Respondent to make unit employees whole by paying them the amounts set forth in the compliance specification, plus interest accrued to the date of payment as set forth in *New Horizon for the Retarded*, 283 NLRB 1173 (1987),[2] and minus tax withholdings required by Federal and State laws.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union with respect to the effects of its decision to close its Utica, New York facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998).[3]

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 business days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing its facility on unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain

[2] In the consolidated complaint and consolidated specification, the General Counsel seeks compound interest computed on a quarterly basis for any monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham,* 352 NLRB 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these unit employees exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business at the facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizon for the Retarded*, supra.

Here, the General Counsel in the compliance specification seeks the minimum of 2 weeks of backpay due the unit employees under *Transmarine*, plus any additional backpay that may be due depending upon bargaining between the parties regarding the effects of the Respondent's decision to close its facility. Exhibits 1–4 of the compliance specification set forth the amount due each employee. As noted above, we shall grant the General Counsel's request and order the Respondent to pay those amounts to the discriminatees, plus any additional backpay that may accrue to the earliest of the conditions set forth in *Transmarine*, plus interest.

Further, in view of the fact that the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Dodge Printing, LLC, Utica, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 259-M, Graphic Communications Conference, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the unit with respect to the effects on the unit employees of its decision to close its Utica, New York facility. The appropriate unit is:

> All employees performing bargaining unit work of the type described in Section 2 of the collective-bargaining agreement between the Union and the Respondent, effective by its terms from April 1, 2006 through March 31, 2008, and was extended from April 1, 2008 through March 31, 2009.

(b) Failing to make severance payments to unit employees pursuant to section 19 of the collective-bargaining agreement and failing to pay unit employees their vacation accruals pursuant to section 12 of the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on unit employees of its decision to close its Utica, New York facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the individuals named below the amounts following their names, plus interest accrued to the date of payment as set forth in *New Horizon for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

EMPLOYEE NAME	VACATION	SEVERANCE	TRANSMARINE
Adamoschek, Arthur	$3,068.80	$1,534.40	$1,534.40
Armstrong, Gary	$4,466.40	$1,488.80	$1,488.80
Billa, Donald	$2,388.51	$1,300.99	$1,300.99
Burdick, Wendy	$2,652.00	$1,060.80	$1,060.80
Davis, David	$2,649.60	$1,152.00	$1,152.00
Decola, Anthony	$3,078.00	$1,231.20	$1,231.20
Dzeravenets, Aliaksan	$1,161.60	$1,161.60	$1,161.60
Fischer, Vicky	$1,280.40	$853.60	$853.60
Fitch, Matthew	$1,128.80	$1,128.80	$1,128.80
Flagg, Robert	$1,170.00	$936.00	$936.00
Georgia, James	$6,240.00	$2,080.00	$2,080.00
Georgia, Jonathan	$1,120.00	$1,120.00	$1,120.00
Graziano, Ronald	$1,693.60	$1,693.60	$1,693.60
Gryziec, Ellamae	-	$758.40	$758.40
Harahliad, Yury	$798.48	$887.20	$887.20
Ingraham, Garret	$2,388.51	$1,300.99	$1,300.99
Kirilko, Pauel	$921.60	$1,024.00	$1,024.00
Kukharchuk, Leonty	$1,591.44	$837.60	$837.60
Lanaux, John	$3,088.00	$1,235.20	$1,235.20
Laurey, Marc	$4,406.40	$1,468.80	$1,468.80
Lay, Soe	$367.20	$734.40	$734.40
Lindig, Tammy	$1,370.40	$913.60	$913.60
Macintosh, Don	$2,772.00	$1,108.80	$1,108.80
Manella, Mark	$6,387.04	$2,903.20	$2,903.20
Manning, Jeff	$4,371.84	$1,821.60	$1,821.60
Markwardt, Fred	$2,388.51	$1,300.99	$1,300.99
Marsden, Chris	$2,233.20	$1,488.80	$1,488.80
Miller, Deserae	$409.20	$818.40	$818.40

Miller, Jerry	$2,388.51	$1,300.99	$1,300.99
Mariano, Robert	$3,056.64	$1,273.60	$1,273.60
Morat, Sharon	$2,561.28	$1,067.20	$1,067.20
Olsen, John	$2,921.60	$1,460.80	$1,460.80
Panasyuk, Valeriy	$2,695.68	$1,497.60	$1,497.60
Peters, Joe	$6,264.00	$2,160.00	$2,160.00
Robbins, Donald	$1,188.00	$1,188.00	$1,188.00
Robotham, James Jr.	$875.84	$1,251.20	$1,251.20
Schulze, George	$4,010.00	$1,604.00	$1,604.00
Shepard, Louis	$4,432.80	$1,477.60	$1,477.60
Shizo, Vyachesl	$5,428.80	$1,809.60	$1,809.60
Skrgic-Dizdarevic, Emina	$884.00	$884.00	$884.00
Stevens, Chris	$293.12	$732.80	$732.80
Stevens, Kaleigh	$897.60	$897.60	$897.60
Stevens, Morris	$5,222.00	$1,492.00	$1,492.00
Stys, John	$3,424.24	$1,488.80	$1,488.80
Tran, Sean	$4,200.00	$1,680.00	$1,680.00
Verenich, Grigory	$3,090.00	$1,236.00	$1,236.00
TOTALS	**$119,425.64**	**$59,845.56**	**$59,845.56**
TOTAL BACKPAY DUE:			**$239,116.76**

(c) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[4] to the Union and to all unit employees employed by the Respondent at any time since January 29, 2009.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 259-M, Graphic Communications Conference, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the unit with respect to the effects on the unit employees of our decision to close our Utica, New York facility. The appropriate unit is:

> All employees performing bargaining unit work of the type described in Section 2 of the collective-bargaining agreement between the Union and us, effective by its terms from April 1, 2006 through March 31, 2008, and extended from April 1, 2008 through March 31, 2009.

WE WILL NOT fail to make severance payments to unit employees pursuant to section 19 of the collective-bargaining agreement and fail to pay unit employees their vacation accruals pursuant to section 12 of the collective-bargaining agreement.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects on unit employees of our decision to close our Utica, New York facility, and put in writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the individuals named below the amounts following their names, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws:

EMPLOYEE NAME	VACATION	SEVERANCE	TRANSMARINE
Adamoschek, Arthur	$3,068.80	$1,534.40	$1,534.40
Armstrong, Gary	$4,466.40	$1,488.80	$1,488.80
Billa, Donald	$2,388.51	$1,300.99	$1,300.99
Burdick, Wendy	$2,652.00	$1,060.80	$1,060.80
Davis, David	$2,649.60	$1,152.00	$1,152.00
Decola, Anthony	$3,078.00	$1,231.20	$1,231.20
Dzeravenets, Aliaksan	$1,161.60	$1,161.60	$1,161.60
Fischer, Vicky	$1,280.40	$853.60	$853.60
Fitch, Matthew	$1,128.80	$1,128.80	$1,128.80
Flagg, Robert	$1,170.00	$936.00	$936.00
Georgia, James	$6,240.00	$2,080.00	$2,080.00
Georgia, Jonathan	$1,120.00	$1,120.00	$1,120.00
Graziano, Ronald	$1,693.60	$1,693.60	$1,693.60
Gryziec, Ellamae	-	$758.40	$758.40
Harahliad, Yury	$798.48	$887.20	$887.20
Ingraham, Garret	$2,388.51	$1,300.99	$1,300.99
Kirilko, Pauel	$921.60	$1,024.00	$1,024.00
Kukharchuk, Leonty	$1,591.44	$837.60	$837.60
Lanaux, John	$3,088.00	$1,235.20	$1,235.20
Laurey, Marc	$4,406.40	$1,468.80	$1,468.80
Lay, Soe	$367.20	$734.40	$734.40
Lindig, Tammy	$1,370.40	$913.60	$913.60
Macintosh, Don	$2,772.00	$1,108.80	$1,108.80
Manella, Mark	$6,387.04	$2,903.20	$2,903.20
Manning, Jeff	$4,371.84	$1,821.60	$1,821.60
Markwardt, Fred	$2,388.51	$1,300.99	$1,300.99
Marsden, Chris	$2,233.20	$1,488.80	$1,488.80
Miller, Deserae	$409.20	$818.40	$818.40
Miller, Jerry	$2,388.51	$1,300.99	$1,300.99
Mariano, Robert	$3,056.64	$1,273.60	$1,273.60
Morat, Sharon	$2,561.28	$1,067.20	$1,067.20
Olsen, John	$2,921.60	$1,460.80	$1,460.80
Panasyuk, Valeriy	$2,695.68	$1,497.60	$1,497.60
Peters, Joe	$6,264.00	$2,160.00	$2,160.00
Robbins, Donald	$1,188.00	$1,188.00	$1,188.00
Robotham, James Jr.	$875.84	$1,251.20	$1,251.20
Schulze, George	$4,010.00	$1,604.00	$1,604.00
Shepard, Louis	$4,432.80	$1,477.60	$1,477.60
Shizo, Vyachesl	$5,428.80	$1,809.60	$1,809.60
Skrgic-Dizdarevic, Emina	$884.00	$884.00	$884.00
Stevens, Chris	$293.12	$732.80	$732.80
Stevens, Kaleigh	$897.60	$897.60	$897.60
Stevens, Morris	$5,222.00	$1,492.00	$1,492.00
Stys, John	$3,424.24	$1,488.80	$1,488.80
Tran, Sean	$4,200.00	$1,680.00	$1,680.00
Verenich, Grigory	$3,090.00	$1,236.00	$1,236.00
TOTALS	**$119,425.64**	**$59,845.56**	**$59,845.56**

TOTAL BACKPAY DUE: $239,116.76

WE WILL pay our unit employees further limited backpay in connection with our failure to bargain over the effects of our decision to close our Utica, New York facility, as required by the Decision and Order of the National Labor Relations Board.

DODGE PRINTING, LLC.